

1 31.07.2023
 jb.
 Jdt.

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction**

**WPA No. 1261 of 2023
Salim Mohammad
Versus
Assistant Commissioner of Revenue, Bureau of
Investigation (North Bengal) Headquarters & Ors.**

Mr. Boudhayan Bhattacharyya
Mr. Sougata Banerjee
Ms. Stuti Bansal
...for the Petitioner

Mr. Hirak Barman
Mr. Bikramaditya Ghosh
...for the State
Mr. Ratan Banik
Mr. Biswaraj Agarwal
Mr. Saptarshi Banik
... For the Respondent No. 4

Heard learned counsels for the parties.

At the outset, it is submitted on behalf of the Commissioner of Central Goods and Service Tax, Siliguri Commissionerate being the 4th respondent herein that since the vehicle was allegedly intercepted by the State Tax Officer of the Revenue and Investigation (North Bengal) Headquarters, the 4th respondent has no role to play herein.

On merits, it is submitted on behalf of the petitioner that in course of sending his consignment comprising old MS iron scrap weighing 30,580 kgs to M/s Uttam Steel & Agro the vehicle was parked

in the parking lot at Bakra compound since it was not completely loaded and movement of the vehicle to its destination had not commenced. The vehicle was allegedly intercepted by the respondent authorities from the parking lot and a detention order was passed under Section 129(1) of the Central Goods and Services Tax Act in Form GST MOV 06 dated March 9, 2023. Penalty to the tune of Rs.4,95,396/- was slapped upon the petitioner for violation of Sections 68 and 129(1) of the Act. The order of penalty was carried in appeal by the petitioner and the appellate authority, by an order passed on 2nd June, 2023 dismissed the appeal primarily on the ground that the conveyance was found to be transporting goods without any e-way bill and tax invoice in contravention of Section 68 of the WBGST Act of 2017 corresponding to Section 68 of the CGST Act 2017 read with Rule 138 of the WBGST Rules, 2017.

Learned counsel for the petitioner submits that since the vehicle had not commenced transportation and was parked at the parking lot for further loading, the provisions of Sections 68 or 129 of the Act have no manner of application in the present case. Loading of vehicle was yet to be completed and the vehicle was partially loaded as the relevant date was a holiday followed by 7th

March, 2023 which was Holi celebrated throughout the State. The e-way bill demonstrates that the same was generated on 6th March, 2023 at 4.14 p.m., that is, after 27 minutes of the alleged interception of the vehicle. Learned counsel explains that the e-way bill was generated immediately after the vehicle was intercepted since there was no occasion for generating the same prior to completion of loading of the vehicle and its weighment and transportation.

Per contra, learned counsel for the State respondents submits that Form GST-MOV –II issued on 6th March, 2023 indicates that the vehicle was intercepted at the check post at Bhaktinagar and the e-way bill suggests that it had commenced movement from Manpari Basti, meaning thereby that vehicle was in movement when it was intercepted. Also, the receipt issued by Bakra compound parking indicates that though the vehicle left parking compound at 4.30 p.m. on 6th March, 2023 the receipt was issued on 5th March, 2023. So the said receipt was subsequently procured by the petitioner to substantiate his case.

Some of these issues have been raised by the authorities in the writ petition for the first time and were not dealt with by the appellate authority in

considering the submission made on behalf of the parties in appeal.

In view of the above, this Court is inclined to hold that the matter be remanded to the appellate authority for revisiting the same upon consideration of the submission which may be made on behalf of both the parties before the authority. The appellate authority shall arrive at a decision as to whether the vehicle in question was in movement at the time of alleged interception of the same, thereby attracting the provisions laid down under Sections 68 and 129 of the Act of 2017.

Accordingly, the writ petition is disposed directing the 2nd respondent to reconsider the appeal upon affording reasonable opportunity of hearing to all the interested persons including the petitioner and pass a reasoned and speaking order thereto within four weeks from the date of communication of this order, in accordance with law. The parties shall be at liberty to place relevant documents before the concerned authority at the time of hearing.

It is made clear that this Court has not gone into the merits of the case and the appellate authority shall be at liberty to deal with the appeal independently without being influenced by any

observation which may have been made in this order.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J)